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THE

CONSTITUTIONAL HISTORY

OF

NEW YORK

FROM THE BEGINNING OF THE COLONIAL PERIOD TO THE YEAR 1905, SHOWING THE ORIGIN, DEVELOPMENT, AND JUDICIAL CONSTRUCTION OF THE CONSTITUTION

By CHARLES Z. LINCOLN

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IN FIVE VOLUMES

VOL. V.

TABLES OF STATUTES HELD CONSTITUTIONAL OR UNCONSTITUTIONAL—
TABLE OF CASES—INDEX OF PERSONS—
GENERAL INDEX.

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TABLE OF STATUTES CONSTRUED ON CONSTITUTIONAL GROUNDS.

NOTE.—The decisions involving statutory construction are scattered through numerous volumes of reports, covering the whole period of our judicial history, and it is therefore difficult to ascertain whether a given statute has been construed on grounds affecting its constitutionality, or whether a given subject has been considered from the standpoint of legislative power. I have tried to collect and present in this table all the important statutes which have thus been construed, and for convenience have arranged them in two divisions; namely, constitutional statutes and unconstitutional statutes; separating each division into two classes,—chronological and topical. Thus each statute, without regard to its subject, is presented in its regular chronological order, and if the reader knows the date of the statute it can readily be found in the chronological table. The topical arrangement is intended to present the subjects which have been considered in construing statutes with reference to their constitutional validity, and it is believed that an examination of this part of the table will show whether a particular subject involving legislative power has received judicial consideration. The notes to the annotated Constitution should also be examined, and especially, as to local laws, the statutes cited in the notes to §§ 16 and 17 of article 3, which statutes usually do not involve any question of principle,

but only questions of technical compliance with the requirements of those sections of the Constitution. It should perhaps be observed that the small number of decisions involving constitutional questions prior to the second Consitution, which took effect December 31, 1822, is due to the fact that, under the first Constitution, the Council of Revision, composed of the governor, the chancellor, and the judges of the supreme court, passed on all bills before they became laws, and in this manner laws received a judicial construction prior to their enactment.

The citations in Vol. IV. do not include any case reported since September 1, 1905. After that volume had gone to press, *Wright* v. *Hart* (1905) 103 App. Div. 218, 93 N. Y. Supp. 60, cited at pages 86, 206, 226, and 278, was reversed in 182 N. Y. 330, 75 N. E. 404. The case construes Laws 1902, chap. 528, amended 1904, chap. 569 (regulating sales of merchandise in bulk), and the court of appeals declares it to be unconstitutional. The act and the latest decision are noted below in the Table of Unconstitutional Statutes.

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1788, chap. 46, § 2. Reference of long account. *Malone* v. *Saints Peter & Paul's Church* (1902) 172 N. Y. 269, 64 N. E. 961.

1797, chap. 51. Onondaga county lands. *Jackson ex dem. Lepper* v. *Griswold* (1809) 5 Johns. 139; *Barker* v. *Jackson* (1826) 1 Paine, 559, Fed. Cas. No. 989; *Jackson ex dem. Hart* v. *Lamphire* (1830) 3 Pet. 280, 7 L. ed. 679.

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1801, chap. 79, par. 4. Religious corporations, powers of trustees. *Dutch Church* v. *Mott* (1838) 7 Paige, 77.

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1806, chap. 52. Protestant Episcopal Charity School in New York. *Re New York Protestant Episcopal Public School* (1864) 31 N. Y. 574.

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1808, chap. 225. See 1787, chap. 57.

1811, chap. 200. See 1787, chap. 57.

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1815, chap. 89. See 1814, chap. 78.

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1817, chap. 262, § 3. Canal lands, compensation. *Wheelock* v. *Young* (1830) 4 Wend. 648.

1818, chap. 210. New York streets. *Detmold* v. *Drake* (1871) 46 N. Y. 318; *Hamersley* v. *New York* (1874) 56 N. Y. 533.

1818, chap. 244. New York almshouse. *Heyward* v. *New York* (1852) 7 N. Y. 314.

1819, chap. 18, § 35. New York harbor masters. *Vanderbilt* v. *Adams* (1827) 7 Cow. 349.

1821, chap. 19. Pulteney estate. *Howard* v. *Moot* (1876) 64 N. Y. 262.

1821, chap. 204. Indian lands, summary removal of trespassers. *New York ex rel. Cutler* v. *Dibble* (1858) 21 How. 366, 16 L. ed. 149, affirming (1857) 16 N. Y. 203.

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1823, chap. 138, § 3. Justices of the peace in new county. *Ex parte M'Collum* (1823) 1 Cow. 550.

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1826, chap. 253. Mohawk & Hudson Railroad Company. *Bloodgood* v. *Mohawk & H. R. R. Co.* (1836) 14 Wend. 52, (1837) 18 Wend. 9, 31 Am. Dec. 313.

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1830, chap. 291, § 24. New York, storage of gunpowder. *Foote* v. *Fire Department* (1843) 5 Hill, 99.

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1881, chap. 554. Supervisors, streets outside cities. *Re Church* (1883) 92 N. Y. 1. See 1875, chap. 482.

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1881, chap. 687, § 2. New York fire department. *Fire Department* v. *Sturtevant* (1884) 33 Hun, 407.

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1882, chap. 287, amending 1879, chap. 229. Chautauqua and Cattaraugus tax law. *Chamberlain* v. *Taylor* (1885) 36 Hun, 24; *Ensign* v. *Barse* (1887) 107 N. Y. 329, 14 N. E. 400, 15 N. E. 401.

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1882, chap. 410, § 2143. New York, penal code applied. *People* v. *O'Neil* (1888) 109 N. Y. 251, 16 N. E. 68.

1883, chap. 21. New York & Oswego Midland R. R. Co. *Wilcox* v. *Baker* (1897) 22 App. Div. 299, 47 N. Y. Supp. 900.

1883, chap. 114. Brooklyn tax deeds. *Kelly* v. *Wheeler* (1888) 21 N. Y. S. R. 311, 3 N. Y. Supp. 289; *White* v. *Wheeler* (1889) 51 Hun, 573, 4 N. Y. Supp. 405; *Terrel* v. *Wheeler* (1890) 123 N. Y. 76, 25 N. E. 329, affirming (1888) 49 Hun, 262, 2 N. Y. Supp. 86, citing 1885, chap. 163, amending above act; *Lamb* v. *Connolly* (1890) 122 N. Y. 531, 25 N. E. 1042; *Wallerstein* v. *Bohanna* (1890) 125 N. Y. 696, 26 N. E. 141; *Fithian* v.

Wheeler (1890) 125 N. Y. 696, 26 N. E. 141; *Litchfield* v. *Brooklyn* (1895) 13 Misc. 693, 34 N. Y. Supp. 1090.

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1883, chap. 516. See 1879, chap. 382.

1884, chap. 153, § 17, amended 1885, chap. 215; 1886, chap. 102. Lewis county taxes. *Prentice* v. *Weston* (1888) 111 N. Y. 460, 18 N. E. 720.

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1884, chap. 202, § 13. Adulterated milk. *People* v. *Cipperly* (1886) 101 N. Y. 634, 4 N. E. 107, reversing (1885) 37 Hun, 319.

1884, chap. 252, § 14. Street railroads. *Re Thirty-fourth Street R. Co.* (1886) 102 N. Y. 343, 7 N. E. 172.

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1884, chap. 516. New York commissioners of accounts. *Re McAdam* (1889) 27 N. Y. S. R. 352, 7 N. Y. Supp. 454.

1884, chap. 522. New York, park in Westchester county. *Re New York* (1885) 99 N. Y. 569, 2 N. E. 642.

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1885, chap. 26, amended 1888, chap. 449. Syracuse, street opening. *Re Oneida Street* (1899) 37 App. Div. 266, 55 N. Y. Supp. 959.

1885, chap. 131. Amsterdam charter. *Re Amsterdam* (1891) 126 N. Y. 158, 27 N. E. 272.

1885, chap. 183. Dairy products. *People* v. *Arensberg* (1887) 105 N. Y. 123, 59 Am. Rep. 483, 11 N. E. 277; *People* v. *Waterbury* (1887) 44 Hun, 493, 9 N. Y. S. R. 5; *People* v. *West* (1887) 106 N. Y. 293, 60 Am. Rep. 452, 12 N. E. 610; *People* v. *Kibler* (1887) 106 N. Y. 321, 12 N. E. 795; *People* v. *Hill* (1887) 44 Hun, 472; *Waterbury* v. *Egan* (1893) 3 Misc. 355, 23 N. Y. Supp. 115.

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1885, chap. 311. New York, review of assessments. *People ex rel. Second Ave. R. Co.* v. *Coleman* (1889) 21 N. Y. S. R. 178, 4 N. Y. Supp. 417.

1885, chap. 342. Mechanics' liens. *Riggs* v. *Shannon* (1891) 27 Abb. N. C. 456, 44 N. Y. S. R. 365, 16 N. Y. Supp. 939; *Boyd* v. *Stewart* (1893) 30 Abb. N. C. 127, 24 N. Y. Supp. 830; *Schillinger Fireproof Cement & Asphalt Co.* v. *Arnott* (1897) 152 N. Y. 584, 46 N. E. 956.

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1885, chap. 448, amending 1855, chap. 427, § 65. Tax sales. *People* v. *Turner* (1889) 117 N. Y. 227, 15 Am. St. Rep. 498, 22 N. E. 1022; *Ostrander* v. *Darling* (1891) 127 N. Y. 70, 27 N. E. 353; *Turner* v. *New York* (1897) 168 U. S. 90, 42 L. ed. 392, 18 Sup. Ct. Rep. 38, affirming (1895) 145 N. Y. 451, 40 N. E. 400. Also *Saranac Land & Timber Co.* v. *Roberts* (1899) 177 U. S. 318, 44 L. ed. 786, 20 Sup. Ct. Rep. 642.

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1885, chap. 454. New York tenement houses. *People ex rel. Kemp* v. *D'Oench* (1888) 111 N. Y. 359, 18 N. E. 862.

1885, chap. 483. Transfer tax. *Re McPherson* (1887) 104 N. Y. 306, 58 Am. Rep. 502, 10 N. E. 685.

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1885, chap. 486. Police relief fund. *People ex rel. Murray* v. *McClave* (1886) 39 Hun, 511, affirmed in (1886) 102 N. Y. 468, 7 N. E. 406.

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1885, chap. 501. See 1880, chap. 542.

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1886, chap. 120, § 207. Lockport, bonds on improvement contracts. *Wilson* v. *Whitmore,* (1895) 92 Hun, 466, 36 N. Y. Supp. 550.

1886, chap. 141. Fishing in Jefferson county waters. *People* v. *Doxtater* (1894) 75 Hun, 472, 27 N. Y. Supp. 481.

1886, chap. 143. Corporations, organization tax. *New York ex rel. Schurz* v. *Cook* (1892) 148 U. S. 397, 37 L. ed. 498, 13 Sup. Ct. Rep. 645, affirming (1888) 110 N. Y. 443, 18 N. E. 113.

1886, chap. 163. Consolidating Auburn railways. *Sandham* v. *Nye* (1894) 9 Misc. 541, 30 N. Y. Supp. 552.

1886, chap. 224, § 1. Cohoes, taxing manufacturing corporations. *People ex rel. Parsons Mfg. Co.* v. *Moore* (1887) 11 N. Y. S. R. 859.

1886, chap. 268; 1886, chap. 310. Dissolution of Broadway Surface R. R. Co. *People* v. *O'Brien* (1888) 111 N. Y. 1, 2 L. R. A. 255, 7 Am. St. Rep. 684, 18 N. E. 692.

1886, chap. 310. See 1886, chap. 268.

1886, chap. 333. Boards of trade. *Reynolds* v. *Plumbers' Material Protective Asso.* (1900) 30 Misc. 709, 63 N. Y. Supp. 303.

1886, chap. 335, § 5. Brooklyn annexation act. *Re Brooklyn* (1894) 143 N. Y. 596, 26 L. R. A. 270, 38 N. E. 983.

1886, chap. 335, § 7. New Lots, justices of the peace. *Gertum* v. *Kings County* (1888) 109 N. Y. 170, 16 N. E. 328.

1886, chap. 472. Quarantine, claim against state. *O'Hara* v. *State* (1889) 112 N. Y. 146, 2 L. R. A. 603, 8 Am. St. Rep. 726, 19 N. E. 659.

1886, chap. 503. See 1884, chap. 534; 1885, chap. 499.

1886, chap. 539. State industrial schools. *People ex rel. Zeese* v. *Masten* (1894) 79 Hun, 580, 29 N. Y. Supp. 891.

1886, chap. 622. Brooklyn, taxation of charitable institutions. *Dyker Meadow Land & Improv. Co.* v. *Cook* (1896) 3 App. Div. 164, 38 N. Y. Supp. 222, affirmed in (1899) 159 N. Y. 6, 53 N. E. 690.

1886, chap. 656. Long Island City taxes. *Re Lamb* (1889) 51 Hun, 633, 4 N. Y. Supp. 858, affirmed in (1890) 121 N. Y. 703, 24 N. E. 1100; *Van Deventer* v. *Long Island City* (1893) 139 N. Y. 133, 34 N. E. 774.

1886, chap. 656. Long Island City water rents. *People ex rel. Flower* v. *Bleckwenn* (1889) 55 Hun, 169, 7 N. Y. Supp. 914, affirmed in (1891) 129 N. Y. 637, 29 N. E. 1031.

1886, chap. 659. Taxing telegraph, telephone, and electric light lines. *People ex rel. Western U. Teleg. Co.* v. *Tierney* (1890) 57 Hun, 357, 10 N. Y. Supp. 940.

1886, chap. 672, amending Code of Civ. Proc. § 572. Executions. *Kelly* v. *Brownlow* (1886) 22 Jones & S. 129.

1886, chap. 679. Taxing fire and marine insurance companies. *Dutchess County Mut. Ins. Co.* v. *Poughkeepsie* (1889) 51 Hun, 595, 4 N. Y. Supp. 93.

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1887, chap. 262. New York park police. *People ex rel. Cline* v. *Robb* (1891) 126 N. Y. 180, 27 N. E. 267.

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1887, chap. 479. Poolselling. *Reilly* v. *Gray* (1894) 77 Hun, 402, 28 N. Y. Supp. 811; *Ludington* v. *Dudley* (1894) 61 N. Y. S. R. 115, 30 N. Y. Supp. 221.

1887, chap. 544, title 5, § 1. Mount Vernon police justice. *People ex rel. Lynch* v. *Duffy* (1888) 49 Hun, 276, 1 N. Y. Supp. 896.

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1887, chap. 716, § 4. New York, electrical conductors. *United States Illuminating Co.* v. *Grant* (1889) 55 Hun, 222, 8 N. Y. Supp. 788. See 1884, chap. 534.

1888, chap. 29. Dunkirk electric lighting system. *Hequembourg* v. *Dunkirk* (1888) 49 Hun, 550, 2 N. Y. Supp. 447.

1888, chap. 89. New York fire department, enabling act. *People ex rel. Kellner* v. *New York* (1893) 3 Misc. 131, 23 N. Y. Supp. 1060.

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1888, chap. 189, amending 1887, chap. 616. Heating passenger cars. *People* v. *New York N. H. & H. R. Co.* (1890) 55 Hun, 409, 8 N. Y. Supp. 672, affirmed in (1890) 123 N. Y. 635, 25 N. E. 953; *New York N. H. & H. R. Co.* v. *New York* (1896) 165 U. S. 628, 41 L. ed. 853, 17 Sup. Ct. Rep. 418, affirming (1894) 142 N. Y. 646, 37 N. E. 568.

1888, chap. 193, § 29. Rochester parks. *Re Rochester* (1893) 137 N. Y. 243, 33 N. E. 320.

1888, chap. 213. Flushing assessments ratified. *People ex rel. Richmond* v. *Wilson* (1888) 21 N. Y. S. R. 120, 3 N. Y. Supp. 326, affirmed in (1890) 121 N. Y. 684, 24 N. E. 1098.

1888, chap. 325. Seneca river improvements. *Waterloo Woolen Mfg. Co.* v. *Shanahan* (1891) 128 N. Y. 345, 14 L. R. A. 481, 28 N. E. 358.

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1888, chap. 555, amending 1880, chap. 36 § 2. Evidence, comparison of handwriting. *People* v. *Molineux* (1901) 168 N. Y. 264, 62 L. R. A. 193, 61 N. E. 286.

1888, chap. 577, § 3. Game and fish protectors. *People* v. *Rouse* (1891) 39 N. Y. S. R. 656, 15 N. Y. Supp. 414.

1888, chap. 581. Elevator charges. *Budd* v. *New York* (1891) 143 U. S. 517, 36 L. ed. 247, 4 Inters. Com. Rep. 45, 12 Sup. Ct. Rep. 468; affirming (1889) 117 N. Y. 1, 5 L. R. A. 559, 15 Am. St. Rep. 460, 22 N. E. 670, (1889) 117 N. Y. 621, 28 N. E. 682.

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1890, chap. 566, § 69. Gaslight companies, meter rents prohibited. *Buffalo* v. *Buffalo Gas Co.* (1903) 81 App. Div. 505, 80 N. Y. Supp. 1093.

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1891, chap. 208. See Code Civ. Proc. § 970.

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1892, chap. 339. New York, Park avenue and Harlem river improvement. *Tocci* v. *New York* (1893) 73 Hun, 46, 25 N. Y. Supp. 1089.

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1893, chap. 661, § 200. Public health, vaccination of school children. *Re Walters,* (1895) 84 Hun, 457, 32 N. Y. Supp. 322; *Viemeister* v. *White* (1904) 179 N. Y. 235, 72 N. E. 97.

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215; 1886, chap. 102. *Prentice* v. *Weston* (1888) 111 N. Y. 460, 18 N. E. 720.

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736, 51 N. E. 257, affirming (1897) 20 App. Div. 494, 47 N. Y. Supp. 56.

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Owner entitled to hearing. 1871, chap. 882. *Re Lent* (1900) 47 App. Div. 349, 62 N. Y. Supp. 227.

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ADDENDUM.

Amendments Approved in 1905.

The action of the legislature in submitting seven constitutional amendments in 1905 has been noted at the end of Chapter XIII., Volume III., page 692, and also in the preface to Volume IV. The latter volume contains the text of the amendments. Volume IV. was in type some time before the election in 1905, but, anticipating the possible approval of the amendments, they were given in connection with the articles or sections affected. After the printing of Volume V. had begun, and before it was completed, the election was held (November 7), and all the amendments were approved. The certificate of the state board of canvassers, dated December 28, 1905, shows the following vote on the amendments:

Article 6, § 1. Supreme court, additional judges (Volume IV. page 524). For the amendment, 297,893; against, 133,999; majority, 163,894.

Article 6, § 2. Appellate division, powers of judges out of court (Volume IV. page 536). For, 288,227; against, 125,649; majority, 162,578.

Article 7, § 4. Limiting state debts, extending term of credit (Volume IV. page 636). For, 293,552; against, 127,364; majority, 166,188.

Article 7, § 11. Payment of state debts (Volume IV. page 669). For, 307,768; against, 134,773; majority, 172,995.

Article 7, § 12. Improvement of highways (Volume IV. page 669). For, 383,188; against, 117,181; majority, 266,007.

Article 8, § 10. New York water debt (Volume IV. page 685). For, 363,117; against, 129,424; majority, 233,693.

Article 12, § 1. Protection of employees (Volume IV. page 770). For, 338,570; against, 133,606; majority, 204,964.